immunities of Article IV" and rule 5 of Article IV does not confer an immunity on the carrier but merely confers a right, the right to limit his liability for any loss or damage to the goods in an amount not exceeding £100 per package or unit. It is submitted that if the Privy Council had to consider rule 5 the words "in any event" therein would have to be construed.

I find myself in agreement with the defendants' contention and hold that I am not bound by the *Maxine* case. The effect of the words "in any event" is stated by the authors of the 18th Edition of *Scrutton* on Charterparties and Bills of Lading at page 441 as follows: —

"'In any event'. The limit on liability is, it is submitted, available in the event of damage by unseaworthiness where there has been no exercise of due diligence."

The authority cited in support of this submission is the Canadian case of *Falconbridge Nickel Mines* v. *Chimo Shipping Ltd.*[2] In that case the carrier expressly relied on, *inter alia*, Article IV rule 5 to limit his liability in a claim by a shipper for loss due to sinking. Kerr J. of the Exchequer Court of Canada (Quebec Admiralty District) found that the loss was due to unseaworthiness of the barge caused by the want of due diligence on the part of the carrier to make the barge seaworthy. Kerr J. also found that the immunities of Article IV rule 2 were of no avail to the carrier but that the limitation of liability in rule 5, where the words "in any event" are used, applied (see at page 298).

I find myself in agreement with Kerr J. and the submission of the authors of the 18th Edition of *Scrutton* on Charterparties and Bills of Lading but there remains to be considered another contention of the plaintiff's, namely, that the defendants were guilty of so fundamental a breach of contract as to make the voyage from Singapore to Merak not a voyage the subject of "the contract of carriage of goods by sea" to which the Carriage of Goods by Sea Act applies. The argument is that to carry the plaintiffs' goods on a rudderless barge which had to be towed by another vessel is clearly outside the contemplation of the plaintiffs when they entered into the contract of carriage of their goods by sea from Singapore to Merak.

I am unable to accept this contention. There is no evidence in support of it. The Bill of Lading issued by the defendants and accepted by the plaintiffs is evidence of the contract of carriage of goods by sea entered into by the parties and in my judgment the voyage during which the plaintiffs' goods were lost is clearly a voyage the subject of the contract of carriage of goods by sea to which the Carriage of Goods by Sea Act applies.

In the result the defendants succeed on the sole issue and there will be judgment accordingly.

Claim dismissed.

Solicitors: *Drew & Napier; Selvadurai & Emmanuel.*

THE "SAN 003";; EAST ASIA SUPPLY CO. PTE. LTD. v. THE "SAN 003" & ORS.

[O.C.J. (Sinnathuray J.) January 5, 1979]

[Singapore — Motion in Admiralty *in Rem & in Personam* No. 725 of 1978]

Practice and Procedure — Interveners — Whether interveners could set aside writ — R.S.C. 1970, O.70 r. 12.

Shipping Law — Arrest of ship — Application to set aside.

In this case the plaintiffs had taken out a writ of summons against the defendants. On an interlocutory application an order of court had been made that the remaining barges which were being built by the defendants be released to the interveners on the provision of a bank guarantee. Subsequently the plaintiffs took steps to have one of the barges arrested. The interveners thereupon applied (a) that the writ of summons be set aside and (b) that the warrant of arrest be set aside.

Held: (1) Order 70 rule 12 of the Rules of the Supreme Court, 1970, implicitly provides that so far as an intervener is concerned, the best he can have is to apply to the court for the release of the vessel. Nothing in the Rules provides for an intervener to set aside the writ of summons itself;

(2) in this case the arrest of the vessel was an abuse of the process of the court and the warrant of arrest should be discharged, but the writ of summons against the second defendants should be proceeded with.

Case referred to:-

(1) *The Lord Strathcona* [1925] P. 143.

MOTION *IN REM & IN PERSONAM.*

Bachoo Mohan Singh for the plaintiffs.

Arul Chandran (*Prem Gurbani* with him) for the interveners.

Sinnathuray J. (delivering oral judgment): In this admiralty action *in rem*, the plaintiffs are East Asia Supply Co. Pte. Ltd., and the second defendants are Middle East Shipyard Pte. Ltd. The writ of summons was issued on 13th of December 1978. Seven days later, Sin Chin Seng Shipbuilding Pte. Ltd., the interveners, were granted leave to intervene, and it is set out in the affidavit on their behalf, that "the interveners intend to move the court by motion to set aside the arrest of the plaintiffs". On the next day, December 21, the interveners filed this notice of motion, the principal prayers of which are:

(a) that the writ of summons herein be set aside;

(b) that the warrant of arrest herein be set aside; and

(c) that the plaintiffs do pay damages to the interveners for wrongful arrest of the vessel "SAN 003".

Notwithstanding the festive season, lengthy affidavits and counter-affidavits have been filed by both the plaintiffs and the interveners. At this hearing, though they have entered appearance, and have been served with the notice of motion, the second defendants are absent.

Now, the events relating to this action are somewhat extraordinary and I should say a few words to explain the background.

The Government of Burma, through its Department of Agriculture and Farm Produce Trade Cor-

poration, entered into two agreements with Anitra Company of Hongkong to build 40 dumb barges and 20 self-propelled barges. Anitra, under the contracts, sub-contracted in identical terms to the interveners who in turn, under their contracts, further sub-contracted the building of the barges to the second defendants. There is a photostat copy of the contract between the interveners and the second defendants exhibited to the affidavit filed on behalf of the interveners. My attention has been drawn to the schedule to that contract, in particular Article XVIII which refers to "Liens and Titles". Having regard to the conclusion I have come to, I do not propose to deal with submission relating to that article, though it may well be the answer in this case.

The completion date of the contract between the interveners and the second defendants was 30th of May 1977. Progress payments had been made and 38 of the 60 barges had been delivered in early 1977. As regards the remaining 22 barges, the interveners claim having paid 95.8% of the purchase price. There is also a provision in the contract for penalty for late delivery. These matters are hotly disputed by the second defendants and there are a number of admiralty actions pending in the courts, one of which is before me, admiralty action in Suit No. 182 of 1978. In those admiralty actions, the plaintiffs, the present interveners, in April 1978, arrested the 22 barges, those that were yet to be delivered by the defendants, the present second defendants.

There have also been taken out interlocutory applications in those admiralty actions. The position today is that the interveners, the plaintiffs in those actions, have an order of court against the defendants, the second defendants in this action, that the remaining 22 barges be released to the plaintiffs on the term that they provide a bank guarantee for $2 million to protect the possessory lien of the defendants in respect of the barges for unpaid purchase monies.

One extraordinary matter in this case is that in those admiralty actions where the interveners are plaintiffs, and the present second defendants are the defendants, the latter had not at any time contended in those actions they had in fact sold the barges to the present plaintiffs. This fact perhaps explains why the second defendants are not in court for the hearing of this motion. Another extraordinary matter is that the plaintiffs in this action had not availed themselves of the procedure provided in Order 70 to intervene in those admiralty actions to assert their claim, a course of conduct which they could have most conveniently taken.

Mr. Arul for the interveners submits that the position of an intervener in an admiralty action is the same as that of a defendant to the action, and in support of this proposition, he relies on the well-known case of *The Lord Strathcona*.[1] But he has not been able to satisfy me that there is any reported case of an intervener having applied to a court and obtained an order to set aside a writ of summons. It seems to me that Order 70 rule 12 which deals with the release of property under arrest implicitly provides that so far as an intervener is concerned, the best he can have is to apply to the court for the release of the vessel. Nothing in the Rules of Court provides for an intervener to set aside the writ of summons itself. As I have said, the interveners obtained leave to enter appearance to move this court to set aside the arrest. I am therefore not going to deal with the lengthy submission of Mr. Mohan Singh for the plaintiffs on matters relating to procedures, in particular relating to setting aside a writ of summons.

I now turn to the application for the discharge of the warrant of arrest. I have said that there is an order of court in force that the 22 barges, one of which is "SAN 003" be released to the interveners on their providing a bank guarantee. I am told from the Bar that the said guarantee was filed on 26th of December. Therefore, it seems to me, that the arrest of the vessel by the plaintiffs, having regard to my earlier observations, is an abuse of the process of the court.

This is brought home when I consider the affidavits that have been filed for this motion. To put shortly, the director of the second defendants and the director of the plaintiffs who has filed affidavits on behalf of the plaintiffs, are related. The former is the father and the latter the daughter. In fact until recently, as recent as October 1978, the father had also been a director of the plaintiffs. I am also told from the Bar that it was the father who had filed affidavits in the other admiralty actions for those defendants. It is in these circumstances that I suspect the facts deposed to in the affidavit filed on behalf of the plaintiffs.

Finally, without going into details, it is clear to me, at the end of the day, whatever be the result of this action, the arrest of the vessel "SAN 003" by the plaintiffs is an abuse of the process of the court. I therefore order that the warrant of arrest against the vessel "SAN 003" be discharged, but that the writ of summons against the second defendants be proceeded with. In the circumstances of this case, there will be no order on prayer three. Costs to interveners.

Order accordingly.

Solicitors: *B. Mohan Singh & Co.; Karthigesu & Arul.*

I.A.C. (SINGAPORE) PTE. LTD. v. KOH MENG WAN

[O.C.J. (Sinnathuray J.) February 9, 1979]
[Singapore — Suit No. 1242 of 1977]

Partnership — Guarantee — Agreement by partner to answer for debts of partnership — Whether it amounted to a guarantee — Whether a partner could guarantee on behalf of the partnership.

The facts of the case are briefly as follows. AAC was a partnership. The defendant became a partner on February 26, 1970 and on June 30, 1975 the defendant ceased to be a partner. Thereafter, Ang was the sole proprietor of AAC. On April 9, 1975 the defendant and Ang executed a document in favour of the plaintiffs in which the former jointly and severally agreed to be answerable and responsible for the payment of airconditioners supplied to AAC by the plaintiffs not exceeding $100,000. On June 1, 1976 the plaintiffs obtained a judgment in the High Court against AAC for $108,398.99 for goods sold and delivered. Then not having obtained satis-